

Affidavit accompanying Motion for
Permission to Appeal In Forma Pauperis

United States District Court for the DISTRICT of DELAWARE

PETITIONER
DERIOUS J. JOHNSON
V.

D.C. Case No. 05-237-KAJ

Third Cir. No. _____

THOMAS CARROLL, WARDEN And
CARL C. DANBERG, ATTORNEY GENERAL
OF THE STATE OF DELAWARE

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury that my answers on this form are true and correct. (28 U.S.C. § 1746, 18 U.S.C. § 1621)

Signed: Johnson, Derious J.

Instructions

Complete all questions on this application and then sign it. Do not leave any blanks. If the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate piece of paper identified with your name, your case's docket number, and the question number.

Date: 9/27/06

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2006 NOV -2 PM 3:46
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My issues on Appeal are:

- ① RACIALLY BIASED "JURY"
- ② INEFFECTIVE ASSISTANCE COUNSEL
- ③ IMPEACHMENT OF DEFENDANTS PRIOR "BAD ACT," DRUG CONVICTION IMPROPERLY ADMITTED INTO EVIDENCE.
- ④ TRIAL COURT FAILED TO INSTRUCT JURY ON ALIBI TESTIMONY / WITHIN EVIDENCE - AND ALIBI DEFENSE.
- ⑤ THE TRIAL JUDGE COMMITTED REVERSIBLE ERROR BY ALLOWING JOHNSON PRIOR CRIMINAL CHARGES INTO EVIDENCE WITHOUT USING THE D.R.E. 404B AND D.R.E. 609 RULES OF EVIDENCE.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

INCOME SOURCE	AVERAGE MONTHLY AMOUNT DURING THE PAST 12 MONTHS	AMOUNT EXPECTED NEXT MONTH
	You	You
Employment	\$ <u>14.50</u>	\$ <u>14.50</u>
Self-Employment	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____
Interest and Dividends	\$ _____	\$ _____
Gifts	\$ _____	\$ _____
Alimony	\$ _____	\$ _____
Child Support --	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____
Public Assistance (such as welfare)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
 Total monthly income	\$ <u>14.50</u>	\$ <u>14.50</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
D.C.C.	D.C.C. 1181 Piddock Road Smymna, DE 19977	N/A	\$ 14.50

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement for each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate (Value)	Motor Vehicle # 1 (Value)
_____		_____	_____
_____		_____	Make & year: _____
_____		_____	Model: _____
			Registration # : _____

Motor Vehicle # 2 (Value)		Other assets (Value)	Other assets (Value)
_____		_____	_____
Make & year: _____		_____	_____
Model: _____		_____	_____
Registration # : _____		_____	_____
_____		_____	_____

6. State every person, business or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or Home Mortgage (Include lot rented for mobile home)	\$ _____	\$ _____
Are real estate taxes included?		
• yes • no		
Is property insurance included?		
• yes • no		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)	\$ _____	\$ _____
Homeowners or renters	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)(specify): _____	\$ _____	\$ _____

	You	Your Spouse
Installment payments	\$ _____	\$ _____
Credit Card (name): _____	\$ _____	\$ _____
Department Store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

- Yes • No If yes, describe on an attached sheet.

10. Have you paid _____ Or will you be paying _____ an attorney any money for services in connection with this case, including the completion of this form?

- Yes • No If yes, how much? \$ _____

If yes state the attorney's name, address and telephone number:

11. Have you paid ____ Or will you be paying ____ anyone other than attorney (such as a paralegal or typist) any money for services in connection with this case, including the completion of this form?

• Yes • No If yes, how much? \$ ____

If yes state the person's name, address and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

My Reason For Filling For FORMA PAUPERIS. is Because I Have Been Incarcerated For the past 4 1/2 years. I HAVE NO money, and Can't Afford an Attorney to Represent me in Court.

13. State the address of your legal residence.

DELAWARE Correctional Center
1181 Paddock Road Smyrna DE 19977

Your daytime telephone number: () N/A

Your age: 26 Your years of Schooling: 9TH

Your social security number: 221-62-1386

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. _____

ADDENDUM TO AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED IN FORMA PAUPERIS

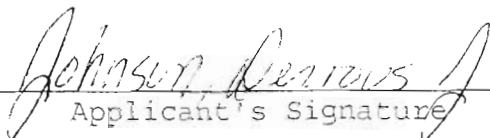
Notice to Litigant: The Prison Litigation Reform Act of 1995, effective April 26, 1996, has made significant changes to the in forma pauperis statute, 28 U.S.C. § 1915. The statute no longer provides for waiver of court filing or docketing fees for prisoners who are granted leave to proceed in forma pauperis. This applies to original proceedings and appeals from decisions in civil actions or proceedings. Once a prisoner has been granted leave to proceed in forma pauperis, the prisoner is obligated to pay the entire filing and/or docketing fee in the manner prescribed by statute, regardless of the outcome of the proceeding or appeal.

Prisoners proceeding in forma pauperis are now required to pay an initial partial filing fee, and thereafter periodic payments will be made from the prisoner's institutional account until the entire fee has been paid. 28 U.S.C. §1915 (b)(1). If a prisoner does not have sufficient funds to pay the initial partial fee, the prisoner will not be prohibited from proceeding. Once there are sufficient funds in the prisoner's account, however, funds will be collected in the manner prescribed by the statute until the entire fee has been paid. 28 U.S.C. §1915 (b)(4). The obligation to pay the fees and any subsequent costs continues even if the prisoner is transferred or released from custody.

Therefore, you should consider carefully whether you wish to go forward with an appeal or proceeding before you submit an affidavit in support of motion to proceed in forma pauperis to this Court.

The Act has amended § 1915 to require that you submit an affidavit in support of motion to proceed in forma pauperis that includes a statement listing all of your assets. 28 U.S.C. § 1915(a)(1). Therefore, when completing the attached affidavit, you must include a complete listing of your assets. You also must complete the following certification:

I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that I have the sum of \$_____ in my prison account at (name of institution in which you are confined) _____.


Applicant's Signature

NOTICE TO PRISONER: You must submit to this Court a certified copy of your prison trust fund account statement (or institutional equivalent) for each institution in which you have been confined for the six-month period immediately preceding the date of this application. 28 U.S.C. §1915(a)(2). The following certification from an authorized officer of your institution(s) must accompany the account statement(s):

I certify that the attached trust fund account statement (or institutional equivalent) is true and correct.

Authorized Officer of Institution

NOTICE TO PRISON OFFICIALS: Pursuant to the Prison Litigation Reform Act, you will be obligated to forward payments to the appropriate United States District Court if the prisoner herein is granted leave to proceed in forma pauperis. 28 U.S.C. § 1915(b)(2) (April 26, 1996). Pursuant to that statute, once an initial partial fee is paid, the prison official in charge of the prisoner's account must forward monthly payments of 20% of the income credited to the prisoner's account during the preceding month, each time the amount in the account exceeds \$10, until the entire filing and/or docketing fee has been paid.

(Cut along the dotted line and forward to each institution in which applicant has been confined for the six-month period prior to the date this application is made.)

I certify that the attached trust fund account statement (or institutional equivalent) is true and correct.

Authorized Officer of Institution

NOTICE TO PRISON OFFICIALS: Pursuant to the Prison Litigation Reform Act, you will be obligated to forward payments to the appropriate United States District Court if the prisoner herein is granted leave to proceed in forma pauperis. Once an initial partial fee is paid, the prison official in charge of the prisoner's account must forward monthly payments of 20% of the

income credited to the prisoner's account during the preceding month, each time the amount in the account exceeds \$10, until the entire filing and/or docketing fee has been paid. 28 U.S.C. § 1915(b)(2) (April 26, 1996).

NOTICE TO PRISONER: You are directed to complete the following form. The top portion of the form must be returned to the Clerk. The lower portion of the completed form shall be returned to the prison official in charge of the prisoner account.

I, DERIOUS J. JOHNSON
(Name of Prisoner and Registered Number if applicable)

authorize the Clerk of the Court to obtain, from the agency having custody over me, information about my institutional account, including balances, deposits, and withdrawals. The Clerk may obtain such information until the fee and any other payments owed the Court are paid. I also authorize the agency having custody over me to withdraw funds from my account and forward payments to the appropriate Clerk of Court in accordance with 28 U.S.C. §1915 (April 26, 1996).

Johnson, Derious J.
Signature of Prisoner

9/27/00
Date

I, DERIOUS J. JOHNSON
(Name of Prisoner and Registered Number if applicable)

authorize the Clerk of the Court to obtain, from the agency having custody over me, information about my institutional account, including balances, deposits, and withdrawals. The Clerk may obtain such information until the fee and any other payments owed the Court are paid. I also authorize the agency having custody over me to withdraw funds from my account and forward payments to the appropriate Clerk of Court in accordance with 28 U.S.C. §1915 (April 26, 1996).

Johnson, Dennis J.
Signature of Prisoner

9/27/04
Date

(Rev. 10/96)